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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/601,075

06/20/2003

Michael P. Boutillette

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04/19/2006

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EXAMINER

STIGELL, THEODORE J

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/601,075

Applicant(s)

BOUTILLETTE ET AL.

Examiner

Theodore J. Stigell

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

***Claim and Specification Objections***

The objections to the claims and specification have been withdrawn in light of the amendments.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Horrocks (3,831,274). Horrocks clearly discloses a tool that includes all of the limitations as recited in claim 1. See Figures 1 and 2 and the respective portions of the specification. Horrocks clearly shows a tool comprising a handle (1, 7) with a pin (23) that is secured to the handle and is sized to fit in within a guidewire channel and engage a guidewire and a web (15) that secures the pin to the handle wherein in the web can fit through a slot of a guidewire channel to allow the pin to be moved along the guidewire channel by the handle and wherein the pin (23) has a broad, flat configuration that is capable of engaging a guidewire and lifting it up.

In regards to claim 2, Horrocks clearly discloses a tool that includes all of the limitations are recited in claim 1 wherein the pin (23) has a tapered end at element (27) that is capable of engaging a guidewire.

In regards to claim 3, Horrocks clearly discloses a tool that includes all of the limitations are recited in claim 1 wherein the web has a thickness that is smaller than that of the diameter of the pin (23).

Claims 1,3,8, and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker (5,322,513). Walker discloses a guidewire exit tool comprising a handle (64), a pin (66) secured to the handle and having a diameter that fits within a guidewire channel of catheter, and a web (52) that secures the pin to the handle wherein the web fits through a slot of the guidewire channel to allow the pin to be moved along the guidewire channel by the handle wherein the pin can engage a guidewire and can lift the guidewire out of the channel, wherein the web has a thickness that is less than the diameter of the pin. It is the position of the Examiner that the inherent use of the device of Walker meets all of the steps of the method disclosed by the Applicant in claims 8 and 10-11.

Claims 1-3 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Gardeski et al. (6,159,198). Gardeski et al. disclose a guidewire exit tool comprising a handle (62), a tapered end pin (66) secured to the handle and having a diameter that fits within a guidewire channel of catheter, and a web (64) that secures the pin to the handle wherein the web fits through a slot of the guidewire channel to allow the pin to be moved along the guidewire channel by the handle wherein the pin can engage a guidewire and can lift the guidewire out of the channel, wherein the web has a thickness that is less than the diameter of the pin. It is the position of the Examiner that the

inherent use of the device of Gardeski et al. meets all of the steps of the method disclosed by the Applicant in claims 8-11.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horrocks (3,831,274), Walker (5,322,513), or Gardeski et al. (6,159,198). They meet the claim limitations as described in claim 1 but fail to disclose the handle having an oval shape with a recessed center, opposing sides, and an annular rim. At the time the invention was made, it would have been an obvious matter of design choice to choose this configuration for the handle. The Applicant has not disclosed that this configuration serves any advantage or solves a stated problem. Furthermore, in the final paragraph of the specification, the Applicant discloses that a "conventional handle" could be used with the present invention. Therefore, it would have been prima facie obvious to modify Horrocks, Walker, or Gardeski et al. to obtain the invention as specified in claims 4-7 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art.

### ***Response to Arguments***

The Applicant has not provided any arguments with respect to Horrocks in the response filed 11/7/2005. The Applicant has just stated that Horrocks does not meet all of the limitations of claim 1 but does not provide any reasons why the limitations are not met. Therefore, the arguments are not found to be persuasive and it is still the Examiner's position that Horrocks meets all of the limitations of claims 1-3.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

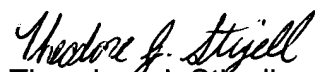
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theodore J. Stigell whose telephone number is 571-272-8759. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3763

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Theodore J. Stigell



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